

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRUSTEES OF THE PAVERS AND ROAD BUILDERS
DISTRICT COUNCIL WELFARE, PENSION,
ANNUITY AND APPRENTICESHIP, SKILL
IMPROVEMENT AND SAFETY FUNDS,

Plaintiffs,

-against-

SUNDEEP CONSTRUCTION COMPANY, INC.,

Defendant.

16 cv _____

COMPLAINT

Plaintiffs, by and through their attorneys, Virginia & Ambinder, LLP, as and for their Complaint, respectfully allege as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to sections 502(a)(3) and 515 of the Employee Retirement Income Security Act, as amended, 29 U.S.C. §§ 1132(a)(3), 1145 (“ERISA”), and section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185 (“LMRA”), and other applicable law, to collect delinquent employer contributions to a group of employee benefit plans, and for related relief.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367, and pursuant to 29 U.S.C. §§ 185 and 1132(e)(1).

3. Venue is proper in this judicial district pursuant to 29 U.S.C. §§ 185(a) and 1132(e)(2).

THE PARTIES

4. Plaintiffs are employer and employee trustees of the Pavers and Road Builders District Council Welfare, Pension, Annuity and Apprenticeship, Skill Improvement and Safety Funds (collectively, the “Funds”). The Funds are multiemployer labor-management trust funds organized and operated in accordance with section 302(c) of the LMRA, 29 U.S.C. § 186(c). The Funds are employee benefit plans within the meaning of section 3(3) of ERISA, 29 U.S.C. § 1002(3), and are administered at 17-20 Whitestone Expressway, Suite 200, Whitestone, New York 11357.

5. Defendant Sundeep Construction Company, Inc. (“Defendant” and/or “Sundeep”) is a corporation organized under the laws of the State of New York. At relevant times, Defendant was engaged in business as an employer within the meaning of section 3(5) of ERISA, 29 U.S.C. § 1002(5), and was an employer in an industry affecting commerce within the meaning of section 301 of the LMRA, 29 U.S.C. § 185. Defendant maintains its principal place of business at 63 Flushing Avenue, Unit 344, Brooklyn, New York 11205.

CLAIM FOR RELIEF

6. Plaintiffs repeat the allegations set forth in paragraphs 1 through 5 above and incorporate them herein by reference.

7. At relevant times, Defendant was a party to, or manifested an intention to be bound by, a collective bargaining agreement (the “Agreement”) with the Highway, Road and Street Construction Laborers Local Union 1010 and/or a predecessor thereof (the “Union”).

8. The Union is a labor organization within the meaning of section 301 of the LMRA, 29 U.S.C. § 185, and represents employees in an industry affecting commerce as defined in section 502 of the LMRA, 29 U.S.C. § 142.

9. The Agreement required Defendant to make specified hourly contributions to the Funds (including amounts for related entities on behalf of which they act as collection agents), and forward specified dues check-offs and other contributions owed to the Union, in connection with all work performed in the trade and geographical jurisdiction of the Union ("Covered Work").

10. The Agreement requires Defendant to submit monthly reports to the Funds detailing the number of hours of Covered Work performed by its employees and the corresponding contributions Defendant owed to the Funds.

11. An audit found that Defendant failed to report and make \$100,647.65 in required contributions to the Funds in connection with Covered Work performed from August 2013 through November 2014.

12. Defendant reported to the Funds that it was required to contribute \$104,649.39 to the Funds in connection with Covered Work performed January 2014, July through December 2014, and July through August 2015. Defendant failed to make any of those contributions.

13. Defendant failed to report to the Funds the number of hours of Covered Work performed by its employees from March through June 2015, and September 2015 through February 2016.

14. Section 515 of ERISA provides that "[e]very employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the

terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.” 29 U.S.C. § 1145.

15. Defendant contravened both the Agreement and section 515 of ERISA by its failure to contribute \$205,297.04 to the Funds in connection with Covered Work performed from August 2013 through August 2015, and by its failure to remit an unknown amount of unreported contributions for March through June 2015 and September 2015 through February 2016.

16. Under section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), and under the Agreement and/or the documents and instruments governing the Funds, Defendant is liable to the Funds for delinquent contributions of \$205,297.04; contributions in an unknown amount for the period March through June 2015, and September 2015 through February 2016, interest on the amount of unpaid fringe benefits at an annual rate of 10%; liquidated damages of 20% of the unpaid fringe benefits; and all reasonable attorneys’ fees, expenses, and costs incurred by the Funds in prosecuting this suit.

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Award judgment to Plaintiffs against Defendant in an amount to be determined at trial, including delinquent contributions of \$205,297.04, unreported contributions for March through June 2015 and September 2015 through February 2016, plus interest, liquidated damages, and attorneys’ fees and costs;

(2) Award Plaintiffs all reasonable attorneys’ fees, expenses, and costs that they incur in prosecuting this suit; and

(3) Award Plaintiffs such other and further relief as is just and proper.

Dated: New York, New York
April 18, 2016

Respectfully submitted,

VIRGINIA & AMBINDER, LLP

By:

A handwritten signature in black ink, appearing to read 'Charles R. Virginia', written over a horizontal line.

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